



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

| | | |
|---------------------------|---|------------------------------------|
| STEVEN CLARK, | § | |
| Petitioner, | § | |
| | § | |
| v. | § | CIVIL ACTION NO. 8:05-2285-HFF-BHH |
| | § | |
| UNITED STATES OF AMERICA, | § | |
| | § | |
| Respondent. | § | |

ORDER ADOPTING THE REPORT AND RECOMMENDATION OF THE
MAGISTRATE JUDGE

I. INTRODUCTION

This is a petition for a writ of *habeas corpus* filed pursuant to 28 U.S.C. § 2241. Petitioner is proceeding *pro se*. This matter is before the Court for review of the report and recommendation (report) of the United States Magistrate Judge in which she recommends that Petitioner's § 2241 petition be dismissed *without prejudice*.¹

III. STANDARD OF REVIEW

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a *de novo*

¹ The facts of this petition are accurately stated in the Magistrate's report, thus the Court does not recite them here.

determination of those portions of the report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or may recommit the matter with instruction. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed her report on October 12, 2005, and Petitioner timely filed his objection to the report on October 31, 2005.

III. DISCUSSION

Petitioner argues that the Bureau of Prisons (BOP) has incorrectly calculated the amount of Good Conduct Time (GCT) to which he is entitled. Specifically, Petitioner asserts that BOP has erroneously construed the statutory language “term of imprisonment” so that inmates receive GCT for time served rather than for sentence imposed. The Magistrate Judge’s report notes that the United States Court of Appeals recently rejected this exact argument in *Yi v. Fed. Bureau of Prisons*, 412 F.3d 526 (4th Cir. 2005). Thus, the Magistrate recommends that the instant petition be dismissed *without prejudice*.

In his objections, Petitioner attacks the Magistrate’s recommendation by contending that “term of imprisonment” should be interpreted so that inmates receive GCT for sentence imposed rather than time served. These arguments were rejected by the Court of Appeals in *Yi*. As *Yi* is binding precedent within this circuit, *Doe v. Charleston Area Med. Center, Inc.*, 529 F.2d 638, 642 (4th Cir. 1975); *see also Virginia Soc’y for Human Life, Inc. v. Fed. Election Comm’n*, 263 F.3d 379, 393 (4th Cir. 2001), the Court finds that Petitioner’s arguments necessarily fail and that the petition should be dismissed.

V. CONCLUSION

After a review of the report and the record pursuant to the standards set forth above, the Court overrules Petitioner's objections, adopts the Magistrate's report and recommendations to the extent that it does not contradict this order, and incorporates the report herein. Accordingly, it is the judgment of this Court that Petitioner's § 2241 petition be **DISMISSED** *without prejudice*.

IT IS SO ORDERED.

Signed this 31st day of October, 2005, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this Order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.